



# **Commonwealth of Massachusetts State Ethics Commission**

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**SUFFOLK, ss.**

**COMMISSION ADJUDICATORY  
DOCKET NO. 690**

## **IN THE MATTER OF ROBERT DEMARCO**

### **DISPOSITION AGREEMENT**

This Disposition Agreement is entered into between the State Ethics Commission and Robert DeMarco pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On February 5, 2003, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by DeMarco. The Commission has concluded its inquiry and, on August 14, 2003, found reasonable cause to believe that DeMarco violated G.L. c. 268A, § 23(b)(2).

The Commission and DeMarco now agree to the following findings of fact and conclusions of law:

#### **Findings of Fact**

1. DeMarco is employed by the state as MassHighway's Highway Safety Team director. In that capacity, he investigates accident scenes and provides education about highway safety as part of his job responsibilities.

2. In spring 2000, DeMarco purchased a dragster and planned to race it competitively. He created Crew Chief Racing, a sole proprietorship, and was to serve as crew chief.

3. In order to support his race team, DeMarco solicited donations from businesses, particularly auto and truck businesses. DeMarco sought financial donations in the amount of \$1,000 or more and in kind donations. DeMarco encouraged potential donors to support Crew Chief Racing by linking it and the donations he received to a program he developed called the SMART safe driving program. DeMarco told potential donors that SMART program representatives planned to bring this program to as many high schools in the Commonwealth as he could, thereby providing highway safety education for teenagers.

4. The state was not involved in the SMART program.



5. During his solicitations, DeMarco often gave solicitees his state business card. He also provided written materials regarding Crew Chief Racing and the SMART program that cited his state Director of Safety position and mentioned this state position in conversation. In a significant number of instances, he drove to the solicitations in his state automobile, which has state government license plates. Based on these actions by DeMarco, many solicitees believed that the state was involved in the SMART Program and Crew Chief Racing.

6. The SMART program has only been presented to two high schools. DeMarco has not raced the dragster competitively.

### **Conclusions of Law**

7. Section 23(b)(2) prohibits a state employee from knowingly or with reason to know using his position to secure for himself or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

8. As the MassHighway's Highway Safety Team director, DeMarco is a state employee as that term is defined in G.L. c. 268A, § 1.

9. By giving solicitees his state business card, providing written materials regarding Crew Chief Racing and the SMART program that cited his state position and mentioning this state position in conversation, and by driving to solicitations in his state automobile, which has state government license plates, DeMarco knew or had reason to know that he was using his official position to influence solicitees to make donations to his race team.

10. Where DeMarco used his state position to obtain donations for his private hobby, the donations were unwarranted privileges. There is no law, rule or agency policy authorizing the use of such public resources to promote DeMarco's private racing hobby.

11. The privileges were of substantial value – DeMarco sought and received significant financial commitments (\$1,000 or more) from corporate sponsors for his race team.

12. These unwarranted privileges were not otherwise properly available to similarly situated people.

13. Therefore, by knowingly, or with reason to know, using his state position to attempt to secure for himself these unwarranted privileges of substantial value not properly available to similarly situated individuals, DeMarco violated §23(b)(2).



14. DeMarco has offered to reimburse any individual/company that made a donation based on the impression that the state was involved in the SMART Program and/or Crew Chief Racing.

### **Resolution**

In view of the foregoing violation of G.L. c. 268A by DeMarco, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by DeMarco:

- (1) that DeMarco pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, §23(b)(2); and
- (2) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**Dated:** October 14, 2003